fire did not fall on him, and that he should be released from his bid. *In re Sermons' Land* (N. C., 1921), 108 S. E. 497.

The court concedes the prevailing rule to be that when there is a binding contract to convey the purchaser, as equitable owner, assumes the risk of loss from accidental fires. *Paine* v. *Meller,* 6 Ves. 349. See 19 MICH. L. REV. 576, 8 MICH. L. REV. 515. But if either the vendor or purchaser has any option in regard to the performance of the contract the loss falls on the vendor. 2 WILLISTON, CONTRACTS, § 932. For this reason it is generally held that a bidder at a judicial sale does not stand the risk of a loss occurring before the court has confirmed his bid. *Ex parte Minor,* 11 Ves. 559; *In re Finks,* 224 Fed. 92; *Harrigan* v. *Golden,* 58 N. Y. S. 726; *Taylor* v. *Cooper,* 10 Leigh (Va.) 317. But see *contra, Cropper* v. *Brown,* 76 N. J. Eq. 406; *Vance's Adm'r* v. *Foster,* 72 Ky. 389. Until the offer has been reported to the court and it has accepted it by confirmation there is no binding contract and the prospective purchaser is not the equitable owner. *Bowdoin* v. *Hammond,* 79 Md. 173. Until such confirmation the purchaser is nothing more than a preferred bidder. 3 JONES, MORTGAGES (Ed. 7), § 1637. The decision in the principal case is reached by construing the position of the prospective purchaser, during the ten days in which the sale is to remain open, as analogous to the position of the purchaser at a judicial sale before confirmation. Such a construction would seem warranted, and the result reached in the case is clearly a just one.

MUNICIPAL CORPORATIONS—FUTURE INSTALLMENTS AS CONSTITUTING PRESENT "INDEBTEDNESS."—Land was deeded to the city of Sacramento for park purposes, the conveyance being subject to the condition subsequent that if the grantee should not expend a minimum of $5,000 per year for ten years on improvements the land should revert to the grantor. Suit by taxpayer to have the deed declared void on the ground that it operated to create "indebtedness" of the city in violation of constitutional provisions was demurred to on the ground that the annual expenditure was to be met from current revenues and hence was not "indebtedness." *Held,* since the grantors had fully performed by delivering the property, the stipulated expenditure was really a consideration, and is "indebtedness," within the constitutional prohibition, of an amount equal to the sum of the installments. *Chester* v. *Carmichael* (Cal., 1921), 201 Pac. 925.

There is an utter lack of harmony in the various interpretations placed by the different courts on the word "indebtedness." Particularly is this so when, as in the principal case, the transaction concerns a present agreement to pay future installments. There are two types of such agreements, one in which the entire consideration is furnished by the creditor at once, as by erecting a public improvement or conveying property to the city, and the other in which the consideration is furnished continuously through a period of years—for example, by supplying water, gas, or electricity. A majority of courts draw a very sensible distinction between these types, regarding the former as creating indebtedness even though each installment is to be paid from current revenues, and the latter otherwise, at least until the service is

actually rendered. *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1; *South Bend* v. *Reynolds*, 155 Ind. 70. A few courts, however, adopt the rigid rule that the sum total of all the installments is "indebtedness," regardless of the object of the expenditure. *Chicago* v. *McDonald*, 176 Ill. 404. Such a rule places a municipality which has already exceeded the debt limit in an extremely embarrassing position by forcing it to do a cash business. On the other hand, a few courts have gone to the opposite extreme and decline to call any future installments "indebtedness" so long as they can be met by current revenues. *Giles* v. *Dennison*, 15 Okla. 55. This construction throws a heavy burden upon present taxpayers. The California court, in rendering the present decision, declared itself in favor of the first of the above views, and decided that the expenditures of the principal case were unconstitutional since they were intended to pay for permanent improvements rather than for current services. But the opportunity of acquiring a park would seem to warrant a contrary result if one could possibly be reached on logical principles. The case has an unusual aspect by reason of the fact that the city would have been under no direct personal obligation to spend the $5,000 annually. The only effect of default would have been reversion of the property. The condition subsequent would have had an effect similar to that of a mortgage on land without personal assumption of the mortgage debt, and this analogy might well have been applied to save the case. It is true that if a city mortgages its land, or if it buys property already subject to a mortgage, the mortgage is "indebtedness," even though there has been no personal assumption of liability. *Mayor of Baltimore* v. *Gill*, 31 Md. 375; *Waterworks* v. *Trebilcock, Mayor of Ironwood*, 99 Mich. 454. But a few courts have held that if a city purchases property, giving back a purchase money mortgage and stipulating that there shall be no corporate liability, there has been no indebtedness created within the constitutional prohibition. *Burnham* v. *Milwaukee*, 98 Wis. 128; *Swanson* v. *Ottumwa*, 118 Iowa 161. These cases rely upon the non-assumption of corporate liability combined with the fact that there is no chance of the city being forced to pay the debt to save property which it had previously held free from incumbrance. The situation which they present is similar to that in the principal case, and if their doctrine could have been applied to it the result would have been a salutary one.

NEGLIGENCE—IMPUTABLE—JOINT ENTERPRISE—HUSBAND AND WIFE.—Plaintiff was riding in an automobile driven by her husband when she was thrown from the car owing to a defect in the highway. Plaintiff and her husband were moving to another city, where they intended to reside, and at the time of the accident the plaintiff was in the rear seat of the car. *Held*, that the husband's contributory negligence was not imputable to the wife, because they were not engaged in a joint enterprise. *Brubaker* v. *Iowa County* (Wis., 1921), 183 N. W. 690.

In speaking of joint enterprise, the court says, "doubtless there may be such special facts showing agency or such joint financial interest in the undertaking as to make the negligence of the husband imputable to the wife,